

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



March 2, 2005

Agenda ID #4349
Ratesetting

TO: PARTIES OF RECORD IN RULEMAKING (R.) 04-04-003 AND R.03-10-003
AND REGISTERED ENERGY SERVICE PROVIDERS

RE: OPINION MODIFYING ORDER INSTITUTING RULEMAKING

This is the draft decision of Administrative Law Judge Mark Wetzell. When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision on March 11, 2005, as the Commission is providing an opportunity for comments notwithstanding the exemption authorized pursuant to Rule 77.7(e). (Article 19 of the Commission's "Rules of Practice and Procedure.") These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 comments shall not exceed 15 pages. No reply comments will be entertained.

Consistent with the service procedures in this proceeding, parties should send comments in electronic form to those appearances and the state service list that provided an electronic mail address to the Commission, including Administrative Law Judge (ALJ) Mark Wetzell at msw@cpuc.ca.gov. Service by U.S. mail is optional, except that hard copies should be served separately on ALJ Wetzell, and for that purpose I suggest hand delivery, overnight mail or other expeditious methods of service. In addition, if there is no electronic address available, the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for alternate service (regular U.S. mail shall be the default, unless another means – such as overnight delivery-- is mutually agreed upon). The current service list for this proceeding is available on the Commission's Web page, www.cpuc.ca.gov.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

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Attachment

Decision **DRAFT DECISION OF ALJ WETZELL** (Mailed 3/2/2005)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Promote Policy
and Program Coordination and Integration in
Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

OPINION MODIFYING ORDER INSTITUTING RULEMAKING**1. Summary**

The April 1, 2004 Order Instituting Rulemaking (OIR) is modified by naming individual Energy Service Providers (ESPs) and Community Choice Aggregators (CCAs) respondents in this proceeding.

2. Background

Decision (D.) 04-01-050, issued in Rulemaking 01-10-024, adopted a policy framework for Resource Adequacy Requirements (RAR) whereby each of the three major California investor-owned electric utilities (IOUs), each ESP, and each CCA (collectively, load-serving entities or LSEs) will be obligated to procure capacity and a reserve margin for their own forecasted load. D.04-01-050 provided for a workshop process to address certain RAR implementation issues, and the April 1, 2004 OIR provided that implementation issues not resolved in R.01-10-024 will be addressed here.

D.04-10-035, the *Interim Opinion Regarding Resource Adequacy* decided in this proceeding on October 28, 2004, addressed various RAR issues that were raised in a workshop report issued on June 15, 2004. Among other things it provided definition and clarification with respect to the RAR policy framework

adopted in D.04-01-050. It also established a second procedural phase (Phase 2) of the RAR portion of this rulemaking, provided for additional workshops in Phase 2, and announced the Commission's intention to implement a functioning RAR program during 2005.

D.04-10-035 expressed the "critical importance" of completing Phase 2 by mid-2005, and it set a target date of September 30, 2005 for the initial round of "year-ahead" RAR compliance filings by all of the LSEs. Upon the issuance of D.04-10-035, the Administrative Law Judge (ALJ) established a preliminary procedural schedule that anticipates completion of Phase 2 with a Commission decision on June 30, 2005. A subsequent ruling by the ALJ on January 7, 2005 confirmed the June 30 target date for a Commission decision.

3. Discussion

D.04-10-035 provides for an assessment of individual LSE load forecasts by the California Energy Commission (CEC). (D.04-10-035, Section 3.4.2, p. 17.) It also requests that the CEC conduct such assessments "well in advance of the September 30 compliance filings by the LSEs." (*Id.*, 18.) The Phase 2 RAR workshops have underscored the need for early submission of load forecast data by LSEs, and they have revealed the need for LSEs to be able to tailor their resource acquisitions to load forecasts that have been reviewed by the CEC.

It now appears that the LSE load forecasts must be submitted well before the target Phase 2 decision date of June 30, 2005. In the absence of such early submission, the ability of LSEs to acquire resources commensurate with their approved load forecasts and make appropriate RAR filings on September 30 could be jeopardized. Ultimately, the Commission's objective to implement a functioning RAR program during 2005 could be jeopardized.

In order to provide the Assigned Commissioner and the ALJ with the requisite authority to direct LSEs to make such submissions, we will modify the OIR to name all LSEs subject to the Commission's jurisdiction respondents to this proceeding. Because the three IOUs were previously named as respondents (OIR, Ordering Paragraph 2), this order will apply to ESPs and CCAs.¹

4. Public Review and Comment

Rule 77.7(e) of the Rules of Practice and Procedure states the following:

“Exemptions. This rule [regarding public review and comment on draft orders] does not apply to ... (ii) an order instituting investigation or rulemaking...”

As this order modifies an order instituting investigation and is solely a procedural order, it is exempt from the requirement for public review and comment. Nevertheless in the interest of maximizing public participation, we have provided for comments on the draft decision under a shortened comment period.

5. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Mark S. Wetzell is the assigned ALJ for the RAR portion of this proceeding.

Finding of Fact

There is a need for submission of load forecast data by LSEs before the target Phase 2 decision date of June 30, 2005.

¹ We will serve this order on ESPs using the ESP registry maintained by the Energy Division. The rules for implementing enabling legislation for CCAs (Assembly Bill 117; Stats. 2002, Ch. 838) are still being developed in R.03-10-003, and formal registration of CCAs has not yet been implemented. We will therefore serve this order on parties to R.03-10-003.

Conclusion of Law

ESPs and CCAs should be named respondents in this proceeding.

O R D E R

IT IS ORDERED that:

1. Each Energy Service Providers (ESP) and each Community Choice Aggregators (CCA) subject to the jurisdiction of this Commission is a respondent to this proceeding.

2. The Executive Director shall cause a copy of the April 1, 2004 Order Instituting Investigation (OIR) and this Order Modifying the OIR to be served on each ESP listed in Appendix A and parties to R.03-10-003 as well as parties to this proceeding. Further, until this proceeding is closed by order of the Commission, the Executive Director shall cause a copy of the OIR and this Order to be served on each newly registered ESP and CCA.

3. This proceeding remains open.

This order is effective today.

Dated _____, at San Francisco, California.